Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
@Communications, Inc.	)	CC Docket No. 02-4
Petition for Declaratory Ruling	)	

REPLY COMMENTS OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel, and pursuant to Public Notice, DA 02-164 (released January 18, 2002), hereby replies to the comments of other parties on the petition for declaratory ruling ("Petition") filed by @Communications, Inc. ("@Communications") in the above-referenced proceeding. In the Petition, @Communications seeks a clear statement from the Commission affirming the requirements under its presently effective rules and policies (i) that a competitive local exchange carrier ("LEC") is entitled to designate a single point of interface ("POI") within a LATA and (ii) that incumbent LECs remain responsible for the costs of transporting their originating traffic to a competitive LEC-designated POI and must reimburse competitive LECs for the costs of terminating such traffic. Inasmuch as these requirements comport with the current state of the Commission's rules and policies, ASCENT supports the position of such commenters as AT&T Corp. ("AT&T"),

[1] ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. The largest association of competitive carriers in the United States, ASCENT was created, and carriers a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services.

Cablevision Lightpath, Inc. ("Cablevision"), Pac-West Telecomm, Inc. and U S LEC Corp. ("Pac-West/US LEC"), and Level 3 Communications, LLC ("Level 3"), which urge the Commission to issue the declaratory ruling sought by @Communications.

Likewise, ASCENT opposes the position of several commenters, including Sprint Corporation ("Sprint"), the incumbent LEC whose actions are at issue in the underlying dispute with @Communications, as well as the Verizon telephone companies ("Verizon") and BellSouth Corporation ("BellSouth") (collectively, the "Incumbent LEC Commenters"), which urge the Commission to refrain from issuing the statement sought by @Communications. By asking the Commission to refrain from reiterating the present state of its rules and regulations as identified by @Communications, the Incumbent LEC Commenters in essence ask the Commission to sanction Sprint's substitution and enforcement of its own diametrically opposed policy judgments for the Commission's own, to the detriment of competitive LECs seeking to enter the local exchange market.

As the commenters in support of @Communications' request point out, a primary goal underlying adoption of the Commission's rules from the outset has been the Commission's desire, consistent with the dictates of the Telecommunications Act, to curb the ability of incumbent LECs to cause a significant delay in competitive LEC entry into the local service market or to impose unnecessary costs upon competitive LEC interconnection with incumbent LEC networks. Because the Commission's commitment to fostering the development of competition in the local exchange market remains strong, it has not retreated from this clearly enunciated position. Indeed, the Commission has not hesitated to remind carriers of its commitment to the development of competition, both in subsequently released Commission Orders and in judicial proceedings implicating the appropriate application of the Commission's Rules. Thus, the Commission has made

clear its position that "[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA"[2] and further explained that "a competitive LEC has the option to interconnect at only one technically feasible point in each LATA."[3] As AT&T notes, the Commission has specifically rejected the contrary notion because, according to the Commission, "such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition."[4] This Commission pronouncement is particularly compelling in the present context, where the Incumbent LEC Commenters argue in favor of an interpretation of the Commission's interconnection rules which is identical to that rejected by the Commission; *i.e.*, that a competitive LEC is required to "interconnect in the same local exchange in which it intends to provide local service."[5] The Incumbent LEC Commenters, however, omit all reference to the Commission's unequivocal statements to the contrary of their position.

Rather, in their effort to support the ability of an incumbent LEC to unilaterally impose an alternative interpretation of the Commission's interconnection rules on competitive LECs, these commenters attempt to interject an uncertainty into enunciated Commission Rules which simply does not exist. Apart from urging the Commission to refrain from considering @Communications' request for a declaratory reaffirming the present status of its interconnection rules, the position of the Incumbent LEC Commenters appears to be that notwithstanding the

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[2] U S West Communications v. AT&T Communicationsof the Pacific Northwest, et al., Civ. 97-1575-JE, Brief of the Federal Communications commission as *Amicus Curiae*, p. 20.

[3] Application by SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas (Memorandum Opinion and Order), 15 FCC Rcd. 18354 (2000), ¶ 78.

[4] Id.

[5] Id.

existence of such rules, the Commission should allow incumbent LECs to impose their own (inconsistent) interpretation of the Telecommunications Act's requirements upon competitive LECs because the Commission has asked for public comment upon several issues which might require resolution in the event the Commission adopts certain modifications to its present intercarrier compensation regime.

In that regard, the Commission has been considering the positions of commenters from all segments of the telecommunications industry, some of which support modification of the rules and many of which continue to urge unmodified retention of these rules as essential to the prevention of the anticompetitive consequences foreseen by the Commission at the time of the rules' original adoption. The Commission has not, as yet, modified the rules implicated in the Petition in any way. Indeed, given the strongly divergent positions being considered by the Commission, at such time as the Commission does issue a decision addressing the questions raised in the Notice of Proposed Rulemaking in *Developing a Unified Intercarrier Compensation Regime*,[6] it is as likely as not that the Commission will determine that the public interest lies in the retention, rather than the modification of those rules in whole or in part. Thus, neither the Incumbent LEC Commenters nor any other party has any reasonable expectation of any particular outcome with respect to the questions posed by the Commission. Neither should any entity presume a wholesale evisceration

[6] 16 FCC Rcd. 9610 (2001).

of rules which the Commission has previously characterized as essential to preventing the thwarting of a fundamental goal of the Telecommunications Act.

The Incumbent LEC Commenters nonetheless seize upon the Commission's mere inquiries to argue that because the Commission (i) may at some point modify its current rules, and (ii) in so doing may address certain issues concerning the number and/or location of competitive LEC POIs within LATAs and the potential reallocation of interconnection costs between carriers, and (iii) may further adopt *in toto* the position presently espoused by Sprint, the Commission should not be concerned with Sprint's present application of those highly speculative potential rule changes to competitive LECs like @Communications. Wholly apart from the protracted entry delays and unnecessary costs which an incumbent LEC could easily visit upon competitive LECs absent an obligation to fully comply with existing Commission rules, the Commission never has sanctioned, and should not here sanction, unilateral carrier abrogation of such rules.

The Commission strongly disfavors the adoption of unilateral policies by carriers, especially when the practical results of a unilaterally-imposed policy would be to disadvantage competitors.[7] As the comments note, although @Communications "designated a single POI within a LATA, Sprint – in its role as an ILEC – refused to deliver traffic to this interconnection point, and has thereby delayed competitive entry by @Communications for over 12 months."[8] Additionally, contrary to the dictates of Section 51.703(b) of the Commision's Rules, the conditions imposed by

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[7] *See, e.g.,* Nevada State Cable Television Association v. Nevada Bell (Order), 13 FCC Rcd. 16774 (1998), ¶ 15; Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (Third Report and Order, Fourth Report and Order), 14 FCC Rcd. 20912 (1999), note 479; Bell Atlantic-Delaware v. Frontier Communications Services; and Ameritech Illinois, Pacific Bell v. Frontier Communications Services (Order on Review), 15 FCC Rcd. 7475 (2000), ¶¶ 7, 8.

[8] Comments of AT&T Corp., p. 1.

Sprint "would require @Communications, as an originating carrier, to bear all transport costs beyond the physical POI into each Sprint local calling area."[9] And as Pac-West/US LEC observes, "[t]o avoid Sprint's transport charges, the CLEC would be compelled to establish multiple POIs with the incumbent, shifting the transport obligation onto the CLEC . . . mak[ing] interconnection more expensive and inefficient, and thereby discourag[ing] new market entry."[10] Thus, there can be little doubt that the actions of Sprint (in the instant case, but also any other incumbent LEC choosing to enforce similar policies), would create a result wholly inconsistent with the pro-competitive goals of the Telecommunications Act, imposing unnecessary and unlawful costs on competitive carriers in derogation of the Commission's rules.

No amount of unsupported assertion on behalf of the Incumbent LEC Commenters that "@Comm is dead wrong in its interpretation of the current rules"[11] or that "an incumbent is only required to deliver its originating traffic, without charge, to a point of interconnection that is located within the local calling area in which the traffic originated"[12] can overcome the clear statements of the Commission itself:

> Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.[13]

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9 Comments of Level 3 Communications, LLC, p. 2; 47 C.F.R. § 51.703(b).

10 Comments of Pac-West Telecomm,. Inc. and U S LEC Corp., p. 5.

11 Comments of Verizon, p. 2.

12 Comments of BellSouth, p. 7.

13 Developing a Unified Intercarrier Compensation Regime (Notice of Proposed Rulemaking), 16 FCC Rcd. 9610 (2001),¶ 72.

A competitive LEC has the option to interconnect at only one technically feasible point in each LATA.[14]

Under our current rules, the originating telecommunications carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier.[15]

The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills tne originating carrier for termination compensation."[16]

A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.[17]

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[14] Application by SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas (Memorandum Opinion and Order), 15 FCC Rcd. 18354 (2000), ¶ 78.

[15] Developing a Unified Intercarrier Compensation Regime (Notice of Proposed Rulemaking), 16 FCC Rcd. 9610 (2001),¶ 70.

[16] *TRS Wireless, LLC v. U S West Communications, Inc.* (Memorandum Opinion and Order), 15 FCC Rcd. 11166 (2000), ¶ 34.

[17] 47 C.F.R. § 51.703(b).

Pac-West/U S LEC is correct in its observation that "[t]he Commission's interconnection rules were established to allow CLECs to determine independently their most efficient means of interconnection given predicted traffic patterns and volume."[18] This is consistent with the Commission's consistent application, since 1996, of "section 251(c)(2) and its implementing rules to prevent ILECs from increasing CLECs' costs by requiring multiple POIs (or imposing costs on CLECs that would amount to the same thing)."[19] There has been no change in the Commission's rules with respect to a competitive LEC's right to identify a single POI within a LATA or the responsibility of a LEC for the costs of transporting its originating traffic. Furthermore, there is no reasonable basis for any entity to assume that less than full compliance with existing Commission rules would be tolerated. In light of the Incumbent LEC Commenters' attempts to obtain this result by interjecting uncertainty into the Commission's Rules where none exists, however, ASCENT urges the Commission to clearly reject these efforts by issuing the declaratory ruling sought by @Communications.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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[18] Comments of Pac-West/U S LEC, p. 2.

[19] Comments of AT&T, p. 3.

March 6, 2002 Its Attorneys

CERTIFICATE OF SERVICE

I, Catherine M. Hannan, do hereby certify that a true a correct copy of the foregoing Reply Comments of the Association of Communications Enterprises has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 6th day of March, 2002:

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